

Ocean Advisory Commission

Second Meeting
December 11, 2008
University of Massachusetts-Boston

In attendance from the Oceans Advisory Commission:

Senator Robert O’Leary
Senator Anthony Petrucci
Representative Frank Smizik
Carolyn Kirk, Mayor of Gloucester; Metropolitan Area Planning Council
Deerin Babb-Brott, Assistant Secretary for Oceans and Coastal Zone
Management, EOEEA
John Bullard, Exec. Dir. Sea Education Association; Southeastern Regional
Planning and Economic Development District
Zack Crowley, Department of Environmental Protection
Jack Clarke, Mass. Audubon
Paul Diodati, Director, Division of Marine Fisheries
Stacey Justus, Coastal Planner, Cape Cod Commission
Alan Macintosh, Assistant Director; Merrimack Valley Commission
JoAnn Taylor, Coastal Planner; Martha’s Vineyard Commission
Susan Tierney (Chair), Analysis Group

Not able to attend:

Representative Demetrius Atsalis
John Pappalardo, New England Marine Fisheries Council
Senator Bruce Tarr

Meeting Summary:

Commission Chair Sue Tierney opened the meeting at 1:00 PM and welcomed the members of the Commission. Following introductions, Chair Tierney noted her experience as chair of the energy transition team for President-Elect Obama, which included meetings that referenced Massachusetts’ efforts in ocean planning.

Chair Tierney then provided an overview of the afternoon’s agenda, noting the importance of the day’s meeting in providing comments and feedback on the goals and objectives of the ocean management plan.

Following Chair Tierney’s overview, EOEEA Assistant Secretary Deerin Babb-Brott provided the Commission an update of the plan development process (note: Assistant Secretary Babb-Brott’s presentation is available on-line at <http://www.mass.gov/eea>). Assistant Secretary Babb-Brott used a timeline to illustrate the next phases of the Plan, noting that at this time the process was about to enter a different phase:

- Information gathering (through January 31, 2009)
- Development of draft plan (February – April, 2009)
- Review and modification of plan (May – June, 2009)
- Formal review of final plan (June – December, 2009)
- Final Plan – available December 31, 2009.

In an update of the process so far, Assistant Secretary Babb-Brott provided details on the following points and thanked the Massachusetts Ocean Partnership for their assistance in certain items:

- Phase 1 – completed public listening sessions and finalizing interest group meetings
- Currently reviewing drafts of reports prepared by consultants funded by the Massachusetts Ocean Partnership, in particular the plan framework materials that will help development of goals and objectives
- Work group reports and a draft of the baseline assessment have been completed; review by the Science Advisory Council began on December 8. (Note: Working group reports are available on the EEA web site).
- The process of developing goals and objectives has started
- All basic technical materials developed during Phase I will help inform Plan development
- Spatial data collected by the work groups and other relevant information will be assembled to start identifying conflicts, issues and compatibilities in the ocean planning area
- OAC and stakeholder meetings will be held throughout the plan development process to develop alternatives and address certain issues as they arise
- A draft plan will be submitted for legislative review by the end of June, 2009

Discussion:

Following the presentation by Assistant Secretary Babb-Brott, the following substantive comments/questions were made by individual commissioners:

Question: Are working group summaries available? *Answer: Full reports will be available in a few days (note: full reports are now available on the EEA web site).*

Question: Because information is being presented in a map format, a two-dimensional tool is being used for a three-dimensional environment. Is there any indication this may present problems in effectively understanding and communicating scientific information (for example, considering depth as an important dimension)? *Answer: As the plan develops, graphics may be broken into three planes to provide such illustrations, as appropriate. Since some of the things on the maps will “move and swim”, the ocean management plan’s goals and objectives need to be flexible and adaptable to take that into account. Moreover, in addition to typical issue- or sector-specific management*

measures, more cross-issue management has to be incorporated, e.g. phytoplankton blooms attract other species. The dynamics involved will need to be considered. Besides a three-dimensional view, a temporal dimension also has to be included.

Question: What methods will be used to address the issue of overlays made up of data on different scales? Answer: *There are ongoing discussions between CZM, DMF, and GIS staff to address this challenge. EEA also had meetings with various fisheries groups who provided qualitative information on fishing areas and seasonal distinctions (what species are fished for, where, when, and using what gear) that will qualify the maps from DMF and the fisheries work group. For example, fishermen indicated an important seasonal whiting fishery in an area marked as "low importance" on the DMF/fisheries work group map.*

Question: What is the situation with historic fishing grounds? Historic fisheries may return, and provisions should be made to address that. Answer: *Interviews with the various fishing groups provided some insight into historic information. Regarding inactive fisheries, the Plan needs to be aware that an area that is not fished does not mean that it is devoid of fish.*

Question: Is it possible to identify where fish landed at a certain port originate? Answer: *It is not always that straight-forward. For example, 95% of landings in New Bedford come outside of the plan area. This also brings up the issue of the relationship between the economy and a resource in a community.*

Question: Are the needs of the planning team being addressed by the USGS who have been conducting seafloor mapping in Buzzards Bay? Answer: *USGS and CZM have been cooperatively engaged in the seafloor mapping exercise. USGS is also represented on the SAC as well as the working groups and helped compile the best available data for the planning process. Because of certain data limitations, EEA is working with scientific institutions to put together the best available data.*

Question: Having lots of data can be both a blessing and a curse. If the overlays show that very little space is left for development, to what extent will the ocean management plan permit reconciling activities or allow changes? Answer: *This is fundamental to the development of the ocean management plan, since the development of goals and objectives is focused on protection, change and tradeoffs.*

Question: As we start feeling the changes from global warming, are possible effects such as fish migration due to increase in water temperature being considered in the short-term? Answer: *The issue of climate change and sea-level rise are included in the Act and will in part be addressed by the Baseline Assessment. This will be one of the issues for which we will identify the steps to be taken and will be addressed as fundamental issues in future versions of the Plan.*

Ocean Services Manager John Weber next provided an overview of the report prepared by the Massachusetts Ocean Partnership consultants (a draft is available on the EEA web page) summarizing comments from the public listening sessions conducted in September and October 2008 throughout Massachusetts. During these meetings, the EEA planning team listened to public issues and concerns to get input on the goals for the Plan and inform the public about the Oceans Act and the development of the ocean management plan. About 400 people attended the 18 listening sessions.

Mr. Weber summarized the main issues raised during these meetings:

- Jobs and economic benefits – mainly relating to commercial fishing, shipping and tourism. The scale of aquaculture projects was also discussed in terms of need for space and proximity from shore—large projects may have greater space needs and thus be further offshore than smaller ones, but smaller aquaculture operations provide local economic opportunities.
- Alternative energy – mentioned at all the meetings. There was general support for identifying locations for these projects but the issue of weighing economic vs. environmental considerations is still a matter of discussion.
- Species and habitat protection – comments focused mainly on defining the approach to habitat protection: for example, could focus on whales and birds, or could focus on species that are important economically
- Importance of commercial and recreational fishing
- Others:
 - Importance of public input
 - Plan should be science-based and flexible
 - Goals and objectives – to consider best available science
 - Apply ecosystem-based management – how?
 - Considering heterogenous nature of the plan area, should a regional approach be applied?
 - Develop performance standards
 - Funding? Future research needs?

Mr. Weber mentioned that the certain compatibility issues brought up during the public listening sessions would likely a focus of attention during the development of the ocean management plan, such as renewable energy and fishing, shipping and fishing or recreation concerns, and others. Other points included the need for local aquaculture and fishing activities to be supported by the Plan, the importance of having coordination between state and federal activities, and the need for the Plan to incorporate new information in future versions.

Mr. Weber then described the process of stakeholder participation. This involved about 60 individual meetings with various organizations in an effort to understand key issues, engage stakeholders in decision-making, get input on goals and objectives, and identify and/or acquire additional data/information pertinent to the plan. These meetings are not over yet and Mr. Weber encouraged groups who wanted to be included to inform the

EEA team. The preliminary report presented is a draft including input from approximately 25 interviews, but a final report will be available following the conclusion of all of the meetings.

The main issues raised during these meetings were: alternative energy siting, habitat protection, commercial fishing/fisheries protection, preservation of tourism, recreational uses, navigation and cross-jurisdictional coordination. Stakeholders stressed that the Plan needs to be based on reliable science, apply the ecosystem-based approach, integrate new science and technology in future versions of the plan, develop mitigation guidelines, perceive issues of regional distinction, standardize data requirements, take into consideration other state requirements, and continue public involvement. Stakeholders also hailed the plan as the chance to establish management principles, balance protection with development, coordinate environmental management and regulations and integrate state-federal waters management.

Discussion:

Members of the Commission applauded the level of effort in the public participation process. It was noted that much of the public attended the listening session to learn about the process, although many made suggestions which were taken into consideration in the development of goals and objectives.

In view of the fact that the public trust nature of the planning area goes beyond participating stakeholders (i.e., considers all Massachusetts citizens), it was suggested that the Ocean Partnership could help find the connection between the general populace and the ocean using a polling process. Such an endeavor could possibly yield more information about public perception, especially since people tend to be attracted to the ocean but the connection is rather weak. A poll previously conducted by Mass Audubon and funded by the Moore Foundation could be revisited.

During this discussion, it was found that unaffiliated people tended to speak almost as much as people representing established groups. People from groups tended to have prepared statements, while unaffiliated citizens spoke more off the cuff. The Commission stressed that the channel for people to speak needs to be kept open. Possibly, public involvement will increase as the Plan process moves forward.

Question: When people were commenting during the listening sessions, did they know what the Plan is about? Do they consider it a spatial plan with things they can/cannot do? Is it a Plan that guides other agency/regulatory actions? Are conditional activities embedded in the Plan? *Answer: In general, it was acknowledged that the Plan will have a spatial component and some way of implementing that component, but will also be a work in progress especially due to the short time frame. They did understand that it will be implemented by existing agencies and recognized the need for a later version to revisit issues.*

Question: If the Plan is implemented through other agencies, is there a timeframe within which they need to adopt or change regulations? *Answer: There is a parallel timeline in place to work with the US Army Corps of Engineers, the US Minerals Management Service, and other state agencies to coordinate permitting processes in state waters. Not all conversations have yet started as some policies still need to be decided upon. The state will be coming back to the Commission with discussion of the overall implementation elements of the plan as it is developed.*

Following a brief break, Assistant Secretary Deerin Babb-Brott then provided a brief presentation of the development of plan goals and objectives. Assistant Secretary Babb-Brott explained that the EEA planning team is currently exploring the best way to develop goals for the plan by looking at the Oceans Act and thinking about how to connect the big picture to implementation details.

Assistant Secretary Babb-Brott described the current structure which is made of four parts with flexibility to change as needed during plan development:

1. Principles and goals from the Act (the Oceans 15)
2. Findings: what is the state of the issues encapsulated in the Oceans 15? Developing these findings would be mainly from information gleaned through stakeholder meetings, public sessions and working group reports. What are the key issues? What information do we need/have? What is the level of stakeholder interest and concern for these issues? The findings serve as a bridge between goals and objectives.
3. Objectives: Statements describing where we want to be and identifying desired outcomes. Objectives can be generally informed by stakeholders
4. Management actions: how do we achieve the objectives? These are the specific things needed to achieve the objective. They will identify source, assign responsibility, serve as monitoring element and relate to indicators.

Assistant Secretary Babb-Brott then gave an example of progressing from principle to goal, objective, and management action. Some prioritization of issues may be necessary. He also explained that some of the principles stated in the Act serve as objectives, depending on the wording used. Assistant Secretary Babb-Brott also explained that the objectives are aimed to satisfy the principles/goals individually and as a group. He concluded that a full suite of goals and objectives will be available for the OAC January meeting.

To lead off the discussion of the goals and objectives presentation, Chair Tierney reiterated that Assistant Secretary Babb-Brott had presented an initial draft of how to think about the issues that need to be addressed and implemented by the plan. The EEA planning team was looking for feedback from the Commission about whether in their opinion this is the right track to follow.

The first suggestion was to identify who will be responsible for implementing a specific management action and what the implementation timeframe will be. Required resources

need to be identified and although these are details that will be addressed further down the road, it will be useful to state these needs up front in the plan.

The Commission members proceeded to discuss the draft objectives and what other information would be needed for generating objectives. Summary issues arising from this discussion included:

- Managing inputs from outside the plan area may be more difficult to specify at this stage. A suggested approach included using the identification of root causes of harm under “impacts to ecosystem health”. Priorities between objectives and within objectives may be necessary.
- Plan needs to address climate change and adaptation versus mitigation as the impacts from climate change will be considerable.
- It is difficult to regulate harm from outside of the planning area boundaries. For example, a certain fish species may be protected from fishing but may be killed by effluent from a power plant. Is there a way to regulate taking of an ocean resource resulting from a distant source of harm? Are there ways to formulate objectives so that the plan will regulate behavior outside the plan area? Answer: *The public trust doctrine could be used as the first line of defense. It could be argued that the source is outside the plan area but is affecting a public resource. Chair Tierney suggested that maybe the federal consistency provision of the Coastal Zone Management Act would come into effect in issues outside state waters.*
- The Plan identifies gaps in state regulations; however, it should also identify what legal basis is required to address these gaps.
- The plan is not a regulatory document but will provide a road map for regulating agencies to follow in implementing the plan. The objectives need to set groundwork for developing regulations. Chair Tierney clarified that the Plan is aimed to require regulatory agencies to ask the question “Is this activity consistent with the Plan?” The Plan will also be a guidance document that gives weight and direction to managers in decision-making. It may also lead to other regulations being drafted. Assistant Secretary Babb-Brott added that the Act allows certain activities in ocean sanctuaries as long as these are of “appropriate scale”. One main issue to be addressed is the definition of “appropriate scale”. The Plan directs EEA to promulgate regulations to define what is allowed or what is prohibited. Existing regulations may also have to be modified to be consistent with the plan. As the discussion continued, it was reiterated that the Plan is given operative legal effect by the Act. However, a discussion ensued over whether the Oceans 15 were intended to be goals of the plan, or if they were just guidelines for consideration in developing the plan and implementing regulations to achieve a goal of sustaining ocean resources. Assistant Secretary Babb-Brott explained

that the EEA planning team considered the Oceans 15 as directives from the Legislature. But are they starting points or do they just give general direction? Senator O’Leary responded that the Oceans 15 are intended to give general direction for the plan. (It was noted that the Oceans 15 were taken from the documents and recommendations of the Ocean Management Task Force.) Therefore, the plan is aimed at laying out how to do what was written in the Oceans 15 and the rest of the Act.

- The conversation then moved towards a definition of the terms “foster” and “support” (as they appear in the Oceans Act) by suggesting that one way to think about this is to identify tools that exist within government authority that constitute fostering. Fostering can be done through tax credits, bully pulpit, clearing the way in permitting, preventing competing uses, etc. The Plan could identify the various ways of doing this.

During the ensuing discussion, Senator O’Leary explained that the since the Act was a compromise, in some areas the Act was specific (for example, the language to exclude regulation of commercial fishing from the ocean management plan), while in other areas, it was more broad (“fostering” is less specific). Additionally, the Legislature had two other main intents: first, to coordinate agency-decision making, consistent with existing law, regarding ocean resources; and second, to address renewable energy by allowing projects of “appropriate scale”. Senator O’Leary explained that the ocean management plan is intended to take the Act’s broadly worded language and focus on what we do or do not want to do. The legislative authors intended that the Plan be not too narrow in its understanding of the Act, and that there will be room to allow change as circumstances and needs dictate. Some of the language in the Act was just intended to point us in a general direction.

- Regarding the subject of fostering and supporting resources for renewable energy, Chair Tierney voiced the need to know what the resource base is to enable an understanding of what development can be supported, what infrastructure is needed, and what tools are available. It is also important to look at the “needs” from the big picture viewpoint when considering renewable energy. For example, when looking at the energy sources available from land and water together, it gives an understanding of the need for renewable energy from the ocean, and hence “foster” becomes more specific in a greater context. The ocean management plan will also look at other uses and activities (where to site LNG terminals, where to carry out sand mining) which would come under “allowable uses” to be “fostered” and “supported”. Assistant Secretary Babb-Brott explained that the findings that will include statements of need and this will serve as part of the policy justification renewable energy in the marine environment. Chair Tierney added that it may be unwise to specify amounts in the plan as needs may change over time. However, the Plan could identify a particular resource and say that it may need to be accessed in time.

- The Commission discussed fisheries management relative to the Act. The Oceans 15 do not refer to “fisheries sustainability” directly although the concept is implied. Fisheries are affected by more than commercial fishing and so fish species are not completely exempt from the mandates of this Act because of the Act’s references to protecting fisheries. Fisheries will also be integrated via the Act’s consistency requirements: the Act provides for the integration of the ocean management plan with fishery management plans.
- The objective “ensure state agency decisions are consistent with the Plan” is a great objective built into the structure of the law. How does this happen? What does that mean? Could you have a law suit against another agency’s actions? One of the main objectives is to identify where other plans are inconsistent with this ocean management plan.
- A provision should be made to include indicators for performance evaluation and to determine if the objectives are being met. Indicators provide a feedback loop.

Mr. Weber then provided a brief overview of some of the work being done to consider the compatibility of various uses and resources. Such compatibility assessments are intended to begin understanding the complex interactions among various existing and future uses and natural resources. For example, there are interactions at various levels during turbine construction/operation/decommissioning with fisheries. , and we need to think about the existing and future fish that may be impacted, issues of gear, and the space between turbines. The notion of compatibility is complex and will depend on the nature of the issue, and can involve temporal dimensions. The overall idea behind compatibility assessment is to help in decision-making, especially when it comes to consideration of tradeoffs, impacts, etc. During the development of the plan, a general matrix with compatibility information will be showing how this works in other places (compatible, incompatible, could be compatible).

Commission members discussed this presentation and made the following points:

- Compatibility assessment is very complex and data is needed to justify decisions. It is important to understand that sometimes decisions will have to be made in the absence of enough information and data. In considering tradeoffs, these issues are multidimensional and complex, e.g. fisheries vs. turbines – turbines replace fuel and prevent oil spills, but how does the threat of an oil spill weigh against the turbines’ impact on fish and fisheries?
- The ocean management plan will establish a framework for other agency decisions. It would be helpful to state agencies to identify spatial boundaries and explain what can happen within the boundaries and how such policy decisions were made. There might be a need for a section in the plan that identifies what activities in the ocean are not regulated by any agency, and then provides a

framework and action for such activities and issues (such as climate change) which should be addressed.

Public Comments:

Peter Borelli made the following comments:

- Regarding the planning vs. regulations issue, the Oceans Act did not abolish the Ocean Sanctuaries Act but did amend it. The Legislature gave the Office of Coastal Zone Management legal authority for implementing the Oceans Sanctuaries Act. There is a need to develop new regulations under the OSA as an opportunity to revive it.
- The Oceans Act's priority to encourage sustainable uses without detriment to the natural environment links back to the Ocean Sanctuaries Act. There is consistency between the two Acts – protection is the top priority.

Steve Barrett of Blue Wave Strategies introduced himself and said that he would be attending Commission meetings as a representative for the Town of Nantucket.